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Election

Application Number	10/694,548
Filing Date	10/27/2003
First Inventor	MACDONALD, Stuart G.
Examiner Name	BOCKELMAN, Mark
Art Unit	3762
Docket Number	SGM-521

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DATE OF TRANSMISSION: March 1, 2005

TITLE OF CASE:

BIOTHERMAL POWER SOURCE FOR IMPLANTABLE DEVICES

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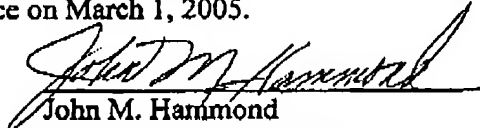
Application No.: 10/694,548

MAR 01 2005

Attorney Docket No.: SGM-521

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Appl. No.	:	10/694,548	Confirmation No. :	2408
Applicant	:	MACDONALD, Stuart G.		
Filed:	:	10/27/2003		
TC/A.U.	:	3762		
Examiner	:	BOCKELMAN, Mark		
Docket No.	:	SGM-521		
Title	:	BIOTHERMAL POWER SOURCE FOR IMPLANTABLE DEVICES		

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Honorable Commissioner for Patents
P.O. Box 1450
Washington DC 22313-1450

ELECTION

Sir:

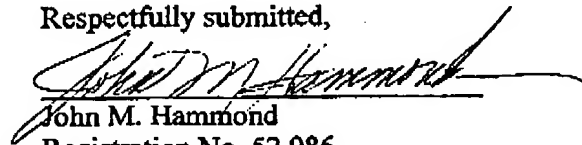
In response to the Office Communication of February 3, 2005, in which the Examiner requested election of species for prosecution on the merits, applicant elects Invention I, Claims 1 – 24, drawn to an implantable rechargeable medical device. Within invention I, applicant elects Species I, Figure 4, with traverse. The applicant submits that claims 1 – 13 and claims 18 – 24 are readable upon Species 1 depicted in Figure 4.

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The bases for the applicant's traverse of the Examiner's restriction requirement are respectfully submitted in the Remarks section beginning upon page 3 of this response.

Respectfully submitted,



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Application No.: 10/694,548

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REMARKS

The applicant respectfully traverses the Examiner's election requirement of February 3, 2005, and respectfully requests reconsideration thereof.

The distinction between Species 1, Species 2, and Species 3 cited on page 2 of the Examiner's Office Communication of February 3, 2005, pertains to the presence of a thermally conductive member that is proximate to one of a first surface of the thermoelectric module at a first temperature and a second surface of the thermoelectric module at a second temperature.

The applicant respectfully submits that claim 13 is a generic claim with regard to this presence of a thermally conductive member, with claims 14 - 16 dependent thereupon being species of the genus defined in claim 13. The embodiment of claim 13 is depicted in Figure 4, with conductive plate 96 being the thermally conductive member recited in claim 13. Figure 5 depicts a further species of the invention depicted in Figure 4, the limitations of which are recited in claim 14 (elongated rod 106), claim 15 (a distal end affixed to a thermal contact, in turn affixed to thermally conductive member 96), and claim 16 (insulating sheath 104).

In addition, it is respectfully submitted that Figure 4 and claim 13 are generic with respect to Figure 6 and claim 17, since the essential heat transfer relationship between the thermally conductive member and the thermoelectric module are identical.

MPEP §806.04(d), Definition of a Generic Claim, reads as follows:

"In general, a generic claim should include no material element additional to those recited in the species claims, and must comprehend within its confines the organization covered in each of the species. For the purpose of obtaining claims to more than one species in the same case, the generic claim cannot include limitations not present in in each of the added species

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claims. Otherwise stated, the claims to the species which can be included in a case in addition to a single species must contain all the limitations of the generic claim."

It is respectfully submitted that the alleged Species II (Figure 5), and Species III (Figure 6), identified by the Examiner in the Office Communication of February 3, 2005 are comprehended by the limitations of claim 13 as supported by the specification and drawings; and that claim 13 does not include any limitations not present in claims 14 - 17.

37 CFR 1.142(a). Requirement for restriction, reads as follows:

"Two or more independent and distinct inventions may not be claimed in one national application except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim."

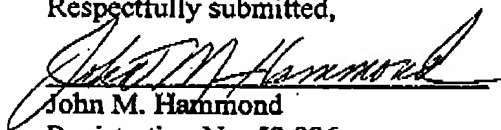
It is respectfully submitted that claims 1 – 24 of the instant application fall within the scope of 37 CFR 1.142(a). It is further respectfully submitted that the number of species claimed is a reasonable number, such that the multiplicity of species would require an unduly extensive and burdensome search.

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Accordingly, reconsideration of the Examiner's restriction requirement for the election of Species I, II, or III is respectfully requested, and examination of claims 1 – 24 of the instant application is also respectfully requested.

Respectfully submitted,



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